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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,313	09/21/2006	Thomas Friedlaender	30071/41841	3782
4743 7590 07/21/2010 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 WILLIS TOWER CHICAGO, IL 60606-6357			EXAMINER TISCHLER, FRANCES	
			ART UNIT	PAPER NUMBER
			1796	
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			07/21/2010 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,313

Applicant(s)

FRIEDLAENDER ET AL.

Examiner

FRANCES TISCHLER

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the amendment filed 5/27/10. Claims 1 – 3, 6 – 7 and 12 – 13 have been amended. Claims 8 – 11 remained cancelled. Claims 1 – 7 and 12 – 13 are now pending.

Any objection or rejection not discussed below is deemed withdrawn.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 1 - 3, 6, 7, 12 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al (US 6,376,563).

The rejection stands as per reasons of record as discussed in the previous office action of 11/27/09.

The claims have been amended from generic "pure plastic flakes" to the more explicit "PET plastic flakes". However, the rejection stands since Robinson reprocesses the same used PET bottles as presently claimed. Also as claimed, Robinson sorts the thin and thick walled portions of the bottles and decontaminates them through various processes including flotation segregation of impurities, wash cycles, drying, cycling of nitrogen gas and melting (abstract, 6:24 – 62, 8:24 – 51. 9:46 – 58, 12:27 – 40, figures 1a, 1b). It is noted that the melting of the thick walled portion of the bottle by adding it to the extruder also reads on an industrial reprocess treatment.

The difference between the prior art and the present invention is that Robinson teaches to decontaminate the thin and thick walled portions of the PET and then to separate them, while the present invention first separates them and then decontaminates them.

However, selection of any order of performing process steps, as determined by case law (See MPEP 2144.04 IV. C.), is prima facie obvious in the absence of new and unexpected results. Therefore, it would have been obvious to one of ordinary skill in the art to have separated the thick and thin walled portions of PET bottles followed by their decontamination to obtain the same decontaminated flakes.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al (US 6,376,563) in view of Van Erden et al (US 6,288,131).

Robinson's disclosure is discussed above and is incorporated herein by reference. Van Erden's disclosure is discussed in the previous office action of 11/27/0 and is incorporated herein by reference.

The rejection stands as per reasons of record as discussed in the previous office action of 11/27/09.

The claims have been amended from generic "pure plastic flakes" to "PET plastic flakes" in particular. However, the rejection stands since Van Erden reprocesses the same used PET bottles as presently claimed. Also as claimed, Van Erden distinguishes between the thin and thick walled portions of the bottles by re-shredding, flattening the thick portions of the PET bottles and decontaminating the thick and thin portions

through various processes including flotation segregation of impurities, air blasting, heating, drying, nitrogen gas cycling, and solid state polymerization (abstract, 3:19 – 29, 5:36 – 63, 6:58 – end, 7:1 – 11, 8:23 – 45, figures 1a – c).

Response to Arguments

Applicant's arguments filed 5/27/10 have been fully considered but they are not persuasive.

Applicant submits that the sorting in step 1 b) is done on pure PET flakes where segregation is not necessary, while Robinson and Van Erden disclose sorting of PET from other plastics.

Applicant's argument is not convincing: Robinson and Van Erden recycle the same plastic PET bottles as presently claimed. Moreover, even if the present claims do not claim the additional steps of removing foreign plastics from the PET, the prior art of Robinson and Van Erden also teach the pure PET plastic flakes claimed (which is obtained from said process of separating them from other plastics, if present).

Applicant submits that, as noted by Examiner, the prior art does not decontaminate the thick and thin walled PET separately.

Applicant's argument is not convincing: Robinson decontaminates/industrially processes the thick and thin walled portions of PET bottles and separates them (see 8:24 – 51). Robinson further discloses that, if desired, the thick walled portion of the PET can be added to the thin walled in the extruder after solid state polymerization to increase the viscosity. Said thick walled portion is previously decontaminated and is

again reprocessed (decontaminated though heating) in the extruder, thus reading on the claimed separation and reprocessing of the thin and thick walled portions of the PET bottles. The order of performing the steps of sorting and decontamination can be done interchangeably as determined by case law (See MPEP 2144.04 IV. C.) and is prima facie obvious in the absence of new and unexpected results. Therefore, it would have been obvious to one of ordinary skill in the art to have separated the thick and thin walled portions of PET bottles followed by their decontamination, or vice-versa, to obtain the same decontaminated flakes.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANCES TISCHLER whose telephone number is (571)270-5458. The examiner can normally be reached on Monday-Friday 7:30AM - 5:00 PM; off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ling-Siu Choi/
Primary Examiner, Art Unit 1796

Frances Tischler
Examiner
Art Unit 1796

/FT/